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**IN THE UNITED STATES JUDICIAL DISTRICT COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION**

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IN RE SUBPOENA SERVED UPON  
ANDERSON & KARRENBERG, P.C.  
Relating to the litigation pending in the United  
States District Court for the District of Maryland  
captioned *Novell, Inc. v. Microsoft Corp.*,  
Civil Action No. JFM-05-1087 (Consolidated  
into *In re Microsoft Corp. Antitrust Litigation*,  
MDL Docket No. 1332)

**MEMORANDUM DECISION AND  
ORDER GRANTING IN PART AND  
DENYING IN PART MOTION TO  
COMPEL ANDERSON & KARRENBERG  
P.C. TO PRODUCE DOCUMENTS IN  
RESPONSE TO A SUBPOENA**

Case No. 2:08 mc 675 DB

District Judge Dee Benson

Magistrate Judge David Nuffer

Microsoft Corporation (Microsoft) filed this ancillary action seeking enforcement of several subpoenas including one served on Anderson & Karrenberg, P.C., a law firm which represents Novell, Inc. (Novell).<sup>1</sup> Novell and Microsoft are parties to a dispute in the U.S. District Court for the District of Maryland.<sup>2</sup> In that action, Microsoft has sought discovery from Novell and now Microsoft seeks to obtain similar discovery from Anderson & Karrenberg.<sup>3</sup>

Anderson & Karrenberg has provided complete copies of many boxes of documents to Novell, at its request, so that Novell could respond to discovery from Microsoft.<sup>4</sup> The law firm did not send Novell a few folders containing legal research and videotapes of two depositions,

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<sup>1</sup> Motion to Compel Anderson & Karrenberg to Produce Documents in Response to a Subpoena, docket no. [1](#), filed September 5, 2008.

<sup>2</sup> Microsoft's Memorandum in Support of its Motion to Compel Anderson & Karrenberg to Produce Documents in Response to a Subpoena (Memorandum in Support ) at viii, docket no. [2](#), filed September 5, 2008

<sup>3</sup> The requests are found in Memorandum in Support at xi-xiii.

<sup>4</sup> Memorandum in Opposition to Microsoft's Motion to Compel . . . (Memorandum in Opposition ) at 6-7, docket no. [21](#), filed September 29, 2008.

for which transcripts were provided.<sup>5</sup> Novell has in turn produced many documents to Microsoft<sup>6</sup> in response to these “substantively identical”<sup>7</sup> discovery requests. There are, however, pending disputes between Microsoft and Novell about Novell’s responses to discovery.<sup>8</sup>

There are still some documents responsive to the subpoena that Anderson & Karrenberg have not produced. These include documents created *during* some litigation in which the boxes of documents were used.<sup>9</sup> Anderson & Karrenberg is searching for these.<sup>10</sup> These documents are responsive to the Request No. 7 in the Anderson & Karrenberg subpoena.<sup>11</sup>

The parties’ extensive briefing raises many issues. But the enforcement of this subpoena, except for Request No. 7, would place an undue burden<sup>12</sup> on the law firm, in light of substantially identical party discovery which has not been shown to be futile or ineffective.

## **ORDER**

IT IS HEREBY ORDERED that the motion to compel is GRANTED IN PART and DENIED IN PART. Within ten days of this order, Anderson & Karrenberg shall provide

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<sup>5</sup> *Id.* at 7.

<sup>6</sup> Memorandum in Opposition at 10.

<sup>7</sup> Memorandum in Support at xi.

<sup>8</sup> Microsoft’s Reply Memorandum in Further Support of Its Motion to Compel . . . (Reply Memorandum) at 4, docket no. [25](#), filed October 10, 2008

<sup>9</sup> Memorandum in Opposition. at 10-12.

<sup>10</sup> *Id.*

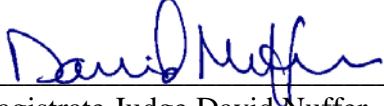
<sup>11</sup> Reply Memorandum at 3.

<sup>12</sup> [Fed. R. Civ. P. 45\(c\)\(3\)\(A\)](#).

Microsoft with three dates within 45 days of this order on which it is prepared to respond to the subpoena as to Request No. 7 and related testimony.

Dated this 9th day of December, 2008.

BY THE COURT

  
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Magistrate Judge David Nuffer